

REMARKS

A. OVERVIEW

Claims 1-44 are pending. In the Office Action dated June 15, 2005, restriction between method and apparatus claims has been required. This is respectfully traversed. Reconsideration of the restriction requirement is respectfully requested.

B. TRAVERSAL OF RESTRICTION REQUIREMENT

Distinctness between the claimed invention requires there be material difference.

Independent claim 1 of Group I claims and independent claim 28 of Group II are reproduced side-by-side below with claim 1 slightly rearranged in order:

Claim 1	Claim 28
	(a) a seed input;
	(b) a seed output;
	(c) a handling system operatively associated with the input and output;
	(d) a controller which
(a) providing a unique identifier to a set of seed;	(d1) accepts or assigns an ID to a set of seeds,
(b) automatically performing one or more operations on the set of seed;	(d2) controls the processing of the set of seeds to the outlet and,
(c) automatically accumulating an end product from the set of seed and storing information about the end product correlated to the identifier.	(d3) controls accumulation of seed from the set of seed into an end product and accumulation of information about seed from the set of seed and correlates the same with the ID.

It is respectfully submitted that the material limitations of the claims are parallel. The fact that these sets of claims fall into different statutory classes does not control whether the Office has made a *prima facie* case of distinctness.

The MPEP states:

Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction there between should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.

MPEP § 806.03

It is respectfully submitted there has not been a showing that claimed apparatus of Group I can be used to practice a materially different method or the method claims can be practiced by a materially different apparatus or by hand.

C. PROVISIONAL ELECTION

Applicants provisionally elect, with traverse, Group I claims if Applicants' request for reconsideration of the Restriction Requirement is denied.

As can be seen, both claims are parallel in their limitations. Each defines an identifier, each defines performing operations or processing on a set of seeds, each defines accumulating an end product, and each defines storing information about the seed and correlating it with the identifier.

In this case, Applicant is merely claiming an invention in different forms. As indicated in the MPEP, an applicant is entitled to do so. Here Applicant claims a method and an apparatus, but both have parallel material limitations. Therefore, they are not materially distinct claims.

The basis for the restriction requirement is understood to be that the method of claim 1 could be practiced by a materially different apparatus, i.e., "a pneumatic ejection sorting apparatus". However, apparatus claim 28 is not limited to any particular type of processing system and, in fact, includes a pneumatic ejection sorting apparatus. The disclosure discusses pneumatic conveyance and a variety of different processing machines. The claim language of claim 28 is not limited to any specific type but calls out a "handling system". Step (d) talks about processing a set of seeds.

D. CONCLUSION

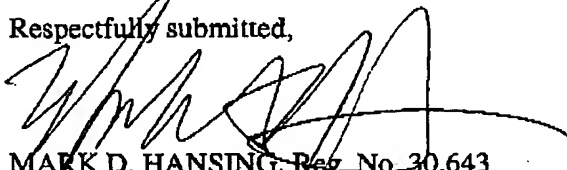
Therefore, it is respectfully submitted a *prima facie* case for restriction is not made out and the restriction requirement should be withdrawn.

It is respectfully submitted all matters raised in the Action have been addressed and that the application is in form for further examination.

It is not believed that any fee or petition for extension of time is required for entry of this response but if any has been inadvertently overlooked, please consider this a request therefore and charge any required fee to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



MARK D. HANSING, Reg. No. 30,643
MCKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 27142

Attorneys of Record

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